

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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Court Minutes

August 24, 2009

MISC. ORDER 2009-009

BY THE COURT:

Associate Justice Vance W. Raye is appointed to serve as Acting Presiding Justice to discharge the duties described in the California Rules of Court, rules 10.1004, 10.1012, and 10.1016, during the absence of the Presiding Justice from the court on August 27 and August 28, 2009, or until his return. (See Cal. Const., art. VI, §3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of that panel during the absence of the Presiding Justice.

SCOTLAND, P.J.

At 9:30 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Scotland, Presiding Justice; Sims, Associate Justice; Nicholson, Associate Justice; and Harper, bailiff.

C056743 THE PEOPLE v. JOSHUA JAHUE NASH

Cause called. Peggy A. Headley, court appointed counsel, argued for appellant. John G. McLean, Deputy Attorney General, argued for respondent. Cause submitted.

At 9:31 a.m., the court recessed. At 9:51 a.m., the court reconvened with Scotland, Presiding Justice; Robie, Associate Justice; and Cantil-Sakauye, Associate Justice.

C058686 THE PEOPLE v. ALONZO SMITH

Cause called. Ronald Richard Boyer, court appointed counsel, argued for appellant. Ivan P. Marrs, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:10 a.m., the court recessed. At 10:11 a.m., the court reconvened with Sims, Associate Justice; Nicholson, Associate Justice; and Butz, Associate Justice.

C057861 LYUSTIGER v. LYUSTIGER

Cause called. Rex S. Heinke argued for appellant. William D. Kopper argued for respondent. Cause submitted.

At 10:42 a.m., the court recessed. At 10:44 a.m., the court reconvened with Nicholson, Associate Justice; Butz, Associate Justice; and Cantil-Sakauye, Associate Justice.

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August 24, 2009, Continued

C056023 DUTTA v. COKER

Cause called. Todd A. Murray argued for appellant. Richard P. Bertolino argued for respondent. Cause submitted.

At 11:04 a.m., the court recessed. At 2:00 p.m., the court reconvened with Scotland, Presiding Justice; Blease, Associate Justice; and Raye, Associate Justice.

C058154 STEVENS v. TRI COUNTIES BANK

Cause called. Suzanne M. Nicholson argued for appellant. C. Athena Roussos argued for respondent. Cause submitted.

At 2:21 p.m., the court recessed. At 2:23 p.m., the court reconvened with Scotland, Presiding Justice; Nicholson, Associate Justice; and Cantil-Sakauye, Associate Justice.

C057324 DOE (M.P.) v. CITY OF SACRAMENTO

Cause called. Michael J. Kinane argued for appellant. Chance L. Trimm, Senior Deputy City Attorney, argued for respondent. Cause submitted.

At 2:58 p.m., the court recessed. At 3:01 p.m., the court reconvened with Sims, Associate Justice; Raye, Associate Justice; and Cantil-Sakauye, Associate Justice.

C058920 THE PEOPLE v. ERIC PEREZ

Cause called. Kenny N. Giffard argued for appellant. Craig S. Meyers, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:18 p.m., the court recessed. At 3:19 p.m., the court reconvened with Sims, Associate Justice; Robie, Associate Justice; and Cantil-Sakauye, Associate Justice.

C058411 MYERS v. TRENDWEST RESORTS, INC.

Cause called. Stephen C. Williams argued and Daniel R. Bartley appeared only for appellant. Felicia R. Reid argued for respondent. Cause submitted.

At 3:45 p.m., the court recessed. At 3:46 p.m., the court reconvened.

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We Concur: BUTZ, J.
Blease, Acting P.J.
Hull, J.

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Court Minutes

August 24, 2009, Continued

C060166 MILLER v. BUSH, SR., et al. (Not For Publication)
The judgment is affirmed. Costs on appeal are awarded to respondents.
(Cal. Rules of Court, rule 8.278 (a) (1) .)
CANTIL-SAKAUYE, J.
We Concur: Scotland, P.J.
 Blease, J.

C056911 HINTON v. BECK; GRANGE (Certified For Publication)
INSURANCE GROUP et al.
BY THE COURT:
The opinion in the above entitled matter filed August 11, 2009, was not
certified for publication in the advance sheets and official reports.
For good cause it now appears the opinion should be published and
accordingly, it is ordered that the opinion be published in the advance
sheets and official reports.
FOR THE COURT:
 BLEASE, Acting P.J.
 Nicholson, J.
 Raye, J.

August 25, 2009

1008162-09
THE HONORABLE FRED K. MORRISON, Retired Associate Justice of the Court
of Appeal, Third Appellate District, is hereby assigned to assist the Court of
Appeal, Third Appellate District, as a justice thereof, on the following date(s):
 October 1, 2009 To November 30, 2009
and until completion and disposition of all causes and matters submitted
pursuant to this assignment including, if necessary by reason of a vacancy or
disqualification of a Court of Appeal justice, all petitions for rehearing arising out
of such causes and matters.
Dated: August 25, 2009

RONALD M. GEORGE
Chief Justice of California
and Chairperson of the Judicial
Council

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August 25, 2009, Continued

**C055692 THE PEOPLE v. (Certified For Partial Publication)
 THONG HACH**

The judgment is affirmed.

MORRISON, J.*

We Concur: Butz, Acting P.J.

Cantil-Sakauye, J.

**C058260 THE PEOPLE v. (Not For Publication)
 THOMAS EDWARD WILLIS**

Defendant's conviction is affirmed. The sentence is vacated and the matter is remanded for a new hearing on the third petition to violate defendant's grant of probation under Proposition 36.

BUTZ, J.

We Concur: Raye, Acting P.J.

Cantil-Sakauye, J.

**C060656 THE PEOPLE v. (Not For Publication)
 MICHAEL LEE STROTHMAN**

The judgment is affirmed.

BLEASE, Acting P.J.

We Concur: Nicholson, J.

Cantil-Sakauye, J.

**C059378 VALLEY OAKS VILLAGE HOMEOWNER'S (Not For Publication)
 ASSOCIATION v. LANE**

The judgment is reversed. Costs on appeal are awarded to the Homeowner's Association. (Cal. Rules of Court, rule 8.278 (a) .)

NICHOLSON, Acting P.J.

We Concur: Robie, J.

Cantil-Sakauye, J.

**C059957 WATSON v. THE SUPERIOR COURT OF (Certified For Publication)
 SACRAMENTO COUNTY; MEDICAL BOARD
 OF CALIFORNIA**

The petition for writ of mandate is denied. Real party in interest shall receive its costs on appeal.

HULL, J.

We Concur: Blease, Acting P.J.

Robie, J.

*Retired Associate Justice of the Court of Appeal. Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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August 25, 2009, Continued

- C058506 In re A.I.; THE PEOPLE v. A.I. (Certified For Publication)**
The jurisdictional and dispositional orders are reversed, and the matter is remanded to the juvenile court with directions to entertain the minor's request for DEJ.
SCOTLAND, P.J.
We Concur: Sims, J.
 Butz, J.
- C058200 THE PEOPLE v. MICHEALLE MARIE KING**
BY THE COURT:
Appellant's petition for rehearing is denied.
BLEASE, Acting P.J.
- C060521 VIRATA v. THE SUPERIOR (Not For Publication)**
COURT OF SACRAMENTO COUNTY
THE COURT:
It is ordered that the opinion filed on August 19, 2009, be modified...
There is no change to the judgment.
FOR THE COURT:
SCOTLAND, P.J.
Robie, J.
Cantil-Sakauye, J.

August 26, 2009

- C058470 THE PEOPLE v. (Not For Publication)**
ROSENDO GARCIA AMAVIZCA
The judgment is affirmed.
HULL, J.
We Concur: Blease, Acting P.J.
 Butz, J.
- C058516 THE PEOPLE v. (Not For Publication)**
SAMANTHA FRANCHETTE JACKSON
The judgment of conviction is affirmed. The sentence is vacated, and the matter is remanded for resentencing in accordance with defendant's plea agreement and part III of this opinion.
SCOTLAND, P.J.
We Concur: Sims, J.
 Cantil-Sakauye, J.

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August 26, 2009, Continued

- C058765 THE PEOPLE v. (Not For Publication)**
JUAN RIVAS-REYES
The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect a sentence of 15 years to life, concurrent, on count one and sentences of 25 years to life, plus 15 years, concurrent, on counts six, seven, eight, and nine, and to forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation.
RAYE, Acting P.J.
We Concur: Hull, J.
Robie, J.
- C059218 THE PEOPLE v. ANTHONY WILLIAMS (Certified For Publication)**
The judgment is affirmed.
BUTZ, J.
I concur: Robie, J.
I concur in the majority opinion.
I write separately to explain the counter-intuitive proposition that defendant was entitled to a claim-of-right defense instruction even though he used a gun in his attempt to reclaim his brother's car. ...
Sims, Acting P.J.
- C061391 THE PEOPLE v. (Not For Publication)**
ROBERT ALAN CLARK, JR.
The judgment is affirmed.
CANTIL-SAKAUYE, J.
We Concur: Sims, Acting P.J.
Raye, J.
- C057565 LEVINSON et al. v. OWENS et al. (Certified For Publication)**
The judgment is affirmed. Plaintiffs shall reimburse defendants for their costs on appeal. (Cal. Rules of Court, rule 8.278 (a) (1) .)
SCOTLAND, P.J.
We Concur: Nicholson, J.
Cantil-Sakauye, J.

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August 27, 2009

- C058163 LUMINA et al. v. UMINA, as Trustee, etc. (Not For Publication)**
The appeal is dismissed. Respondents are entitled to their costs on appeal. (Cal. Rules of Court, rule 8.278 (a) (5) .)
ROBIE, J.
We Concur: Blease, Acting P.J.
 Sims, J.
- C059227 TRACY FIRST v. CITY OF TRACY; (Certified For Partial Publication)**
WINCO FOODS
The judgment is affirmed. City of Tracy and WinCo Foods are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278 (a) (2) .)
NICHOLSON, J.
We Concur: Scotland, P.J.
 Cantil-Sakauye, J.
- C059750 CITY OF LINCOLN v. ESTRIDGE et al. (Not For Publication)**
The judgment is affirmed. We note, however, that although not raised by the parties, there is a clerical error in the judgment. It incorrectly reflects that the trial court awarded defendants \$127,750 on their cross-complaint, rather than \$127,570, which the court stated was the stipulated value of the stockpile area. The court is directed to correct the judgment to award defendants \$127,570 on their cross-complaint.
Defendants shall recover their costs on appeal.
(Cal. Rules of Court, rule 8.278 (a) (1) .)
SCOTLAND, P.J.
We Concur: Sims, J.
 Butz, J.
- C061839 C.B. v. SUPERIOR COURT OF SHASTA (Not For Publication)**
COUNTY; SHASTA COUNTY DEPARTMENT
OF SOCIAL SERVICES et al.
The writ petition is denied.
BLEASE, Acting P.J.
We Concur: Robie, J.
 Cantil-Sakauye, J.

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August 28, 2009

C058744	PULTE HOME CORPORATION v. CITY OF MANTECA	(Not For Publication)
C058744	MORRISON HOMES, INC., et al. v. CITY OF MANTECA	

The judgment is reversed. The city shall recover its costs on appeal.
(Cal. Rules of Court, rule 8.278 (a) (1) .)

ROBIE, J.

We Concur: Scotland, P.J.

Raye, J.